

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600**

<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

Case No. A-6048

PETITION OF LINDA ULRICH AND BRAD LANG

(Hearing held February 9, 2005)

OPINION OF THE BOARD

(Effective date of Opinion, March 17, 2005)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.323(a). The petitioners propose the construction of a new single-family dwelling that requires a variance of fourteen (14) feet as it is within forty-six (46) feet of the established front building line. The required setback is sixty (60) feet.

Dick Witmer of Witmer Associates, LLC, appeared with the petitioner at the public hearing.

The subject property is Lot 3, Hensley Subdivision, located at 11000 Marcliff Road, North Bethesda, Maryland, 20852, in the R-200 Zone (Tax Account No. 0400045292).

Decision of the Board: Requested variance **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose the construction of a new single-family dwelling.
2. Mr. Witmer testified that the property is a corner lot located at the intersection of Tuckerman Lane and Marcliff Road. Mr. Witmer testified that because the property must meet two established building line setbacks, the resulting building envelope is twenty-eight feet wide and one-hundred-thirty feet long. The total square footage of the buildable envelope is 3,650 feet. See, Exhibit No. 11 [subdivision plat].
3. Mr. Witmer testified that the existing house will be demolished and a new house built. Mr. Witmer testified that the proposed house will fit within the footprint of the existing house and that the existing house currently does not meet the required established building line setbacks. Mr. Witmer testified that a major portion of the new house will be set

back further away from Marcliff Road than the existing house. See, Exhibit No. 12 [site plan – footprint analysis].

4. Mr. Witmer testified that the view from the neighboring properties will not materially change and that the new house will be screened by the existing, mature trees along the boundary of the property.

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The petitioners propose the demolition of the existing house and the reconstruction of a new house. The new house will fit within the footprint of the existing house. The application of the required established building line setbacks to the subject property results in a very shallow building envelope and one that would be twenty-eight feet wide and one-hundred-thirty feet in length. The existing house currently does not meet the required established building line setbacks and the new house will not be built any closer to the street than the existing house.

The Board finds that these are exceptional circumstances peculiar to the property and that the strict application of the zoning regulations would result in practical difficulties to and an undue hardship upon the property owners.

- (b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variance requested for the construction of a new single-family dwelling is minimum reasonably necessary.

- (c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The Board finds that the proposed construction will continue the residential use of the property and that the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

(d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.

The Board finds that the new construction will not materially change the view from the surrounding properties and that the variance will not be detrimental to the use and enjoyment of the neighboring and adjoining properties.

Accordingly, the requested variance of forty-six (46) feet from the required sixty (60) foot established front building line for the construction of a new single-family dwelling is granted subject to the following conditions:

1. The petitioner shall be bound by all of her testimony and exhibits of record, and the testimony of her witnesses, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4 and 5(a) through 5(d).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Donna L. Barron, seconded by Wendell M. Holloway, with Louise L. Mayer, Angelo M. Caputo and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the foregoing Resolution.

Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 17th day of March, 2005.

Katherine Freeman

Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.